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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,062	01/03/2001	Zhongming Zeng	CCPIT102	9268

7590

09/24/2002

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EXAMINER

TELLER, ROY R

ART UNIT

PAPER NUMBER

1653

DATE MAILED: 09/24/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/674,062

Applicant(s)

ZENG, ZHONGMING

Examiner

Roy Teller

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1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### DETAILED ACTION

Claims 7, 9, 11, 12, 15-18, 20 and 21 are improper multiple dependent claims. In this office action, the above-mentioned claims will be referred to as depending upon the lowest claim number to which it refers. Claims 7, 9, 11, 12, 15-18 and 21 depends on claim 1. Claim 20 depends on claim 19.

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I, claims 1-18, drawn to a composition for reducing vaginal acidity, are for example classified in at least class 424, subclass 430. (see also explanation below)

Group II, claims 19-21, drawn to a method of use comprising the composition, are for example classified in class 536, subclass 23.74.

Inventions in group I and group II are distinct and/or independent, one from the other because the composition for reducing vaginal acidity does not require the method of use.

Claims 1 and 19 contain a Markush group which absent factual evidence to the contrary contains single amino acids (class 562, subclass 533); and oligopeptide/polypeptide (class 530, subclass 300+). In group I and II, the amino acids (single) are not equivalent to a oligopeptide/polypeptide since there is an absence of peptide bonds, such amino acids *per se* are separately searched and differently classified from peptides.

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The amino acids, physiologically acceptable salts of amino acids, oligopeptides and polypeptides are distinct and different on the basis of physical, chemical and biological properties even where the application would place all as a composition, they are all of different function. The search of the patent and technical literature for one of the amino acids, physiologically acceptable salts of amino acids, oligopeptides and polypeptides would not have resulted in a complete search for any one of the combinations.

Because these inventions are distinct for the reasons given above and since they have acquired a separate status in the art as shown by their different classification and/or divergent subject matter, and/or are separately and independently searched, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention; either group I or II, and an appropriate election under 35 U.S.C. 121 of amino acids (single) *per se* or oligopeptide/ polypeptide, to be examined even though the requirements be traversed (37 CFR 1.143).

a. A telephone call was made to Daniel McEachran on 9/16/02 regarding this restriction requirement, an election was not made at this time.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Teller whose telephone number is (703) 305-4243. The examiner can normally be reached on Monday-Friday from 6:00 am to 2:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can be reached on (703) 308-2923. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

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RT

  
CHRISTOPHER S. F. LOW  
SUPERVISORY PATENT EXAMINER  
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